

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

IN THE MATTER OF CAPITAL CASE	)	ADMINISTRATIVE ORDER
MANAGEMENT PLAN	)	No. 2012-173
_____	)	

The Arizona Supreme Court has ordered that capital cases shall be tried within twenty-four months from the date the state files a notice of intent to seek the death penalty pursuant to Rule 15.1(i). See Rule 8.2(a)(4), Arizona Rules of Criminal Procedure.

The just and speedy processing of capital cases requires a uniform and active case management policy. The following procedures shall be followed by the Superior Court in Maricopa County for the management of capital cases.

**IT IS ORDERED:**

1. All capital cases shall be managed pursuant to this Capital Case Management Plan.
2. Upon filing by the State of the Notice of Intent to Seek the Death Penalty, the Criminal Department Presiding Judge or his/her designee shall issue a capital case assignment and scheduling order similar in form to Attachment A. The case assignment and scheduling order shall at a minimum:
  - a. Set the last day twenty-four months from the date the state files a notice of intent to seek the death penalty pursuant to Rule 15.1(i);
  - b. Set a firm trial date within the last day;
  - c. Set a date for a final trial management conference approximately thirty days before the firm trial date;
  - d. Assign the case to a capital case management judge;
  - e. Set the first case management conference before the assigned judge;
  - f. Order that a resolution management conference be conducted at least sixty days before the final trial management conference.

3. Each capital case shall be assigned to a capital case management judge. That judge shall manage the case and, if available, preside over the trial. Should the capital case management judge be unavailable to try the case, the Criminal Presiding Judge or his/her designee shall reassign the case as soon as possible after being advised of the assigned capital case management judge's unavailability.
4. At the first case management conference, the assigned judge shall set subsequent case management conferences not more than every 60 days. Prior to each case management conference, the assigned judge shall require counsel to submit a jointly agreed upon written case status report showing the progress made on the case.
5. Any motion to continue the firm trial date or to extend the last day shall be ruled on by the Criminal Presiding Judge or his/her designee.

**IT IS FURTHER ORDERED** terminating Administrative Order No. 2009-108.

DATED this 6th day of December, 2012.

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Norman J. Davis  
Presiding Judge

Original: Clerk of the Court

Copies: Hon. Douglas Rayes, Criminal Department Presiding Judge  
Criminal Court Judges and Commissioners  
Hon. Tom Horne, Attorney General  
Hon. Bill Montgomery, County Attorney  
Hon. Joseph Arpaio, Sheriff  
Hon. Michael Jeanes, Clerk of the Court  
Jim Haas, Public Defender  
Marty Lieberman, Legal Defender  
James Logan, Public Defense Services  
Bruce F. Peterson, Legal Advocate  
Raymond L. Billotte, Judicial Branch Administrator  
Barbara Broderick, Chief Adult Probation Officer  
Phil Knox, Deputy Court Administrator  
Bob James, Criminal Court Administrator

## Attachment A

### Capital Case Assignment and Scheduling Order

The State has filed a notice seeking the death penalty. Rule 8.2(a)(4), Arizona Rules of Criminal Procedure, requires capital cases to be resolved within twenty-four (24) months from the date the State files a notice of intent to seek the death penalty pursuant to Rule 15.1(i). Article II, § 2.1 (10), Constitution of the State of Arizona, guarantees each victim the right to a speedy trial. The Notice of Intent to Seek the Death Penalty was filed on \_\_\_\_\_.

Rule 1.2, Arizona Rules of Criminal Procedure, provides:

These rules are intended to provide for the just, speedy determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, the elimination of unnecessary delay and expense, and to protect the fundamental rights of the individual while preserving the public welfare.

The Arizona Rules of Criminal Procedure will be enforced to achieve those goals. Material facts and exhibits not disclosed may be precluded. Failure to timely disclose information required to be disclosed pursuant to Rules 15.1 and 15.2, Arizona Rules of Criminal Procedure, may result in sanctions being imposed. Counsel should assure that their respective disclosure statements and supplements are complete and comprehensive.

Accordingly,

**IT IS HEREBY ORDERED** setting the **LAST DAY** as \_\_\_\_\_.

**IT IS FURTHER ORDERED** pursuant to A.R.S. §§ 13-753 and 13-754, that Defendant undergo IQ, competency and sanity prescreening evaluations. In the event an objection to the testing is not filed by Defendant within ten business days of the date of this minute entry, the Court will appoint one or more experts to conduct the prescreening evaluations regarding Defendant's intelligence quotient, competency to stand trial and whether Defendant was sane at the time Defendant allegedly committed the charged crime(s).

**IT IS FURTHER ORDERED** setting trial on \_\_\_\_\_ at \_\_\_\_\_ a.m.

This is a firm trial date and will not be continued absent a "showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice." See Rules 8.2(d) and 8.5(b), Arizona Rules of Criminal Procedure. The trial date is being set early in the case to assist assigned counsel in resolving any scheduling conflicts.

Each retained expert should be informed of the trial date to confirm their availability in the event that the expert becomes a testifying witness. If an expert witness is not available at the time of trial, counsel should arrange to take a videotape deposition for presentation of that expert witness' testimony to the jury.

**IT IS FURTHER ORDERED** that the assigned judge shall not grant a continuance to the trial date beyond the current last day. Any motion to continue the trial date beyond the current last day must be submitted to the Presiding Criminal Judge or his/her designee.

**IT IS FURTHER ORDERED** assigning this case to Judge \_\_\_\_\_. The assigned judge will handle all pretrial matters. In the event the assigned judge is in trial or otherwise unavailable on the trial date, another judge will try the case.

This Court has an obligation to facilitate that capital cases are tried in a timely manner by prepared counsel meeting qualifications set the Supreme Court,

**IT IS THEREFORE ORDERED** setting a Rule 6.2 hearing on \_\_\_\_\_ at \_\_\_\_\_ a.m. before the Criminal Presiding Judge, Judge \_\_\_\_\_, to determine defense counsel. At the hearing, proposed counsel shall provide the Court with verification of counsel's certification to defend a capital case and be prepared to discuss the number of cases, capital and non-capital, in which they are currently counsel of record.

**IT IS FURTHER ORDERED** that the following disclosure schedule shall apply:

1. The State shall abide by the time limits set forth in Rule 15.1, and in particular, Rule 15.1(i), Arizona Rules of Criminal Procedure.
2. The Defendant shall abide by the time limits set forth in Rule 15.2, and in particular, Rule 15.2(h), Arizona Rules of Criminal Procedure. All mitigation evidence shall be disclosed in accordance with the requirements of Rule 15.2(h).
3. Alternatively, counsel may personally confer and present to the court at the first case management conference a case management plan including a discovery and disclosure schedule which, if adopted by the court, will be the controlling schedule for the case. The case management plan proposed by counsel must accommodate the above trial date and last day.
4. The disclosure of each expert witness shall be accompanied by at least three dates on which the expert and the disclosing party's counsel are available for opposing counsel to conduct an interview of the expert witness.

The schedule established by the Arizona Rules of Criminal Procedure or adopted by the court may be deviated from by written agreement between

counsel and approval of the assigned judge, but any deviation from the time limits prescribed by the Arizona Rules of Criminal Procedure or the adopted case management plan shall not affect the last day or trial date.

Evidence, material facts or exhibits not fairly disclosed may be precluded from use at any phase of the trial.

**IT IS FURTHER ORDERED** that prior to the next scheduled status conference before the assigned judge, counsel who will try the case shall personally meet and decide on a date by which all witness interviews shall be completed. The judge shall include that date in the status conference minute entry.

**IT IS FURTHER ORDERED** that counsel have set and participate in a resolution management conference at least 60 days prior to the final trial management conference. All counsel shall attend the resolution management conference including those who have the authority to settle the case. If the trial attorney must consult with someone in order to obtain authority to settle the case, the person with whom consultation is required shall personally attend the resolution management conference.

**IT IS FURTHER ORDERED** affirming the case management conference before the assigned judge on \_\_\_\_\_ at \_\_\_\_\_ a.m. The assigned judge shall set subsequent case management conferences not more than every 60 days.

**IT IS FURTHER ORDERED** that at each case management conference, counsel shall submit a jointly agreed upon written case status report showing the progress made on the case. At a minimum, the report shall set forth the status of all forensic testing and the number of interviews completed. Failure to submit a written report may result in the imposition of sanctions.

At Defendant's counsel's request, an Order for Production of Mitigation Documents pertaining to acquisition of Defendant's records will be signed by the Criminal Presiding Judge and will be available for pickup at the Criminal Presiding Judge's chambers by Defendant's counsel, Defendant's mitigation specialist or an authorized representative of Defendant.

**IT IS FURTHER ORDERED** that all *ex parte* motions requesting additional orders for acquisition of mitigation evidence shall be submitted to the assigned judge. Should an *ex parte* meeting with the assigned judge to discuss the details of the mitigation work be deemed necessary, defense counsel may make that request pursuant to Rule 15.9(b), Arizona Rules of Criminal Procedure.

**IT IS FURTHER ORDERED** setting a final trial management conference on at \_\_\_\_\_ a.m. before \_\_\_\_\_ (the assigned judge).

**IT IS FURTHER ORDERED** that all materials needing language translation must be submitted to CITS no later than 120 days prior to the final trial management conference. Counsel shall advise CITS of any interpreter needs at trial no later than 60 days before trial. A request for translation services made less than 120 days prior to the final trial management conference will not be considered as a ground for a trial continuance.

**IT IS FURTHER ORDERED:**

**1. No less than five (5) judicial days prior to the final trial management conference**, counsel shall file:

- A. Any trial memoranda (optional), which will be in lieu of post-trial briefs unless otherwise requested by the Court at the conclusion of the trial.
- B. Motions *in limine*, which must meet the test of ***State v. Superior Court***, 108 Ariz. 396, 499 P.2d 152 (1972): "The primary purpose of a motion *in limine* is to avoid disclosing to the jury prejudicial matters which may compel a mistrial." Each motion shall be limited to one issue.
- C. A Joint Pretrial Statement (**not optional**). **Objections to exhibits and deposition testimony may be waived unless set forth in the Joint Pretrial Statement.**
- D. An agreed-upon jury questionnaire.
- E. Proposed jury instructions. Prior to the due date for the proposed jury instructions, counsel shall personally consult for the purpose of preparing and submitting a joint set of agreed-upon preliminary and final jury instructions and clean copies thereof. If counsel request any non-uniform jury instruction, the Court requests that counsel provide a disk containing all non-uniform jury instructions in Word format.

Non-RAJI (Revised Arizona Jury Instructions – Criminal, 3<sup>rd</sup> Ed.) instructions should be typed, each on a separate page with a heading (i.e.: Defendant's Instruction No. 2 etc.), and provide authority for the instruction. Please number each instruction consecutively, rather than leaving a blank space for someone else (such as the court) to number. Counsel should also submit a clean copy of each non-RAJI instruction.

- 2. Any written response to a motion *in limine* may be filed no later than noon of the day before the final pretrial conference.
- 3. At least three days before the trial date, the trial lawyers or their knowledgeable assistants shall appear in the trial division to present all exhibits. The exhibits will be marked serially as they are listed in the LIST

OF EXHIBITS which will be prepared by counsel and downloaded (saved) onto a CD in Microsoft Word and given to the clerk with the exhibits. The parties shall advise the division, referring specifically to the pretrial statement, which exhibits may be marked directly in evidence. All exhibits will be clearly marked to correspond with the list provided. **Counsel are directed to meet in person to exchange the exhibits before coming to court. Counsel will make sure that they do not bring to the clerk a set of exhibits that includes duplicate exhibits.** Counsel should not reserve exhibit numbers for additional exhibits, miscellaneous demonstrative exhibits, and the like. Counsel shall also present original depositions for filing at that time. Written stipulations to admit specified exhibits in evidence are encouraged. If an objection to an exhibit is not stated in the pretrial statement, all objections are deemed waived and the trial judge will assume the exhibit may be marked directly in evidence.

4. All documents and pleadings described above shall be delivered or telefaxed to opposing counsel on the date they are delivered to the Court.
5. All motions other than motions *in limine* shall be filed at least **60 days before the final pretrial management conference** to allow sufficient time for briefing and oral argument. The trial will not be continued because a motion is pending.
6. Expert witnesses should be scheduled to allow sufficient time to complete direct, cross and redirect examinations by 4:30 p.m. If a doctor or other expert witness is scheduled to appear in the afternoon on any trial day, the party calling the witness should consider having the witness plan on returning to court the morning of the next trial day unless all counsel have agreed to a time allocation for completing their questioning by 4:30 p.m. The trial judge will likely not keep the jury later than 4:30 p.m.